

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Italy.

APPENDIX

ECRI wishes to point out that the analysis contained in its second report on Italy, is dated 22 June 2001, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Italy to engage in a process of confidential dialogue with ECRI on its draft text on Italy and a number of his comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Italian governmental authorities expressly requested that the following observations on their part be reproduced as an appendix to ECRI's report.

Observations provided by the Authorities of ITALY CONCERNING ECRI'S REPORT ON ITALY

“General remarks

Italy confirms its full commitment to fight against racial discrimination both at the national and international level.

The Italian legal framework is inspired by the principle that countering racism and racial discrimination on a global level means first of all providing every person living in our country with the opportunity of being integrated at all levels of Italian society, while respecting his/her cultural identity.

A true multicultural society, as stressed in the motto of the European Conference against racism of Strasbourg in November 2000, “All Different, all Equal”, is for Italy both a challenge and a resource to enrich the society.

At the International level, Italy fully co-operates with all International Organisations, Institutions and Human Rights mechanisms acting in this important field.

Pursuant to its deep commitment to counter any form of racism, racial discrimination, xenophobia and related intolerance, Italy has actively collaborated with the Secretariat of the Council of Europe, during the Semester of Italian Presidency of the Council, to the organisation of the Strasbourg Conference against Racism. With the same constructive spirit we participated to the Durban Conference against racism, where Italy key role was acknowledged with the election as Chairman of the Main Committee.

Efforts to further improve the fight against racism are always needed and Italy fully recognises the important role of ECRI in this respect. Italy will consider ECRI's recommendations as a valuable tool to improve, where necessary the situation and it will disseminate the final text in all the competent official and private fora in Italy.

While submitting the annex of the Italian Government to the II Report, Italy is confident that ECRI, will avoid unmotivated generalisations and would bring to its attention any particular case that ECRI may consider not being treated in accordance with the internal or international standards in the field of combating racism and intolerance.

Executive summary

A. Italy considers useful to avoid to single-out in the Executive Summary any particular ethnic or national group.

For this reason, Italy proposes to delete "... and notably Albanians" (second line of second paragraph).

B. Even recognising that an organic law on asylum does not exist, Italy stresses that the whole issue is ruled by various provisions, included some of Constitutional law. Moreover, Government and the Parliament are considering the possibility of improving the current rules.

Overview of the situation

A. International legal instruments

1. Italy attributes a great importance to the contents of Protocol n. 12 to ECHR and it's proud to have actively contributed to the definition of the text and to the fact that it has been opened to signature during the period of the Italian Presidency of the Council of Europe.

B. Constitutional provision and other basic provisions

Citizenship legislation

7. Children who do not acquire the nationality of their parents obtain Italian citizenship since their birth.

8. As far as the attribution of the Italian citizenship is concerned, the fourth phrase should read as follows: "...the attribution of citizenship remains a discretionary act of the Italian authorities, against which it is possible to appeal to the competent Judicial Authorities"

9. Italy will take into account the proposal of ECRI that the current law on citizenship could be further improved. Nevertheless, it should be noted that the provisions of law n. 91/1992 are among the most advanced and open in favour of children and long term residents.

Children born or raised in Italy obtain automatically and with immediate effect Italian citizenship by means of a simple declaration made between 18 and 19 years of age, as mentioned under para 7.1 of ECRI Report.

C. Criminal law provisions

12. It must be noted that the consideration that the number of criminal proceedings before Courts is lower than the actual number of racist acts occurring in Italy is inconsistent and not enough supported by factual elements, or statistical data.

In Italy there is the legal principle that prosecution is compulsory whenever the injuries are particularly serious. In all other cases the judicial actions start on express demand of the offended persons. Over the last years the crimes committed for racist motivations by individuals or people belonging to extremist organizations were duly investigated and prosecuted.

E. Administration of justice

17. The law implementing article 111 of the Constitution provides, in its present wording, that any person, as from the moment of its first contact with the judicial authorities, shall be informed of his/her rights in the language he/she knows. In this regard, as an example, we enclose the forms used by the judicial authorities in the phase of preliminary investigations (indagini preliminari) and of preliminary hearings (udienze preliminari).

Furthermore, the Court of Cassation (Corte di Cassazione) has reaffirmed the principle stating that any judicial act regarding the suspect (indagato) and/or the accused (imputato) shall be null and void if it has non been translated in his/her mother-tongue.

18. The number of foreigners in the Italian prisons is due to the fact that many illegal immigrants are more easily involved in criminal activities. Our legal system is based on the principle that the punishment has to be proportionate to the seriousness of the act and has to take into account the offender's capability to commit a crime (article 133 of the Italian criminal code). Therefore there could not be any difference in a sentence concerning an Italian or a non-Italian citizen for the same offence.

Legal aid

19. Law n. 217 of 30 July 1990, as integrated by law n. 134 of 23 March 2001, provides that any foreign citizen, even if he/she is not legally a resident in the country, can be granted legal aid (gratuito patrocinio) at the expenses of the State, without exception, on the basis of a simple affidavit/sworn statement (autocertificazione) endorsed by the Consular Authority. Any complaint on this matter receives due attention by the competent Italian Authorities.

Legal aid defending counsels are not to be chosen from a special list of lawyers but any lawyer of choice may be appointed and his fees will be borne by the State on the basis of the profession's list of fees.

H. Reception and status of non-citizens

28-30 The Italian Government is discussing possible changes to Immigration Law 286/98, taking into consideration:

- the evolution of the phenomenon of immigration in Italy and Europe,
- the on-going debate on an EU Directive, currently being negotiated by the Council of the EU.

Immigrants without legal status

31. As regards the living conditions in the Centres for permanence and temporary assistance, it should be underlined that all structures where to lodge immigrants pending decision on their future, meet the standards established by the Minister's Directive of 30 August 2000 and by the related Charter of the Rights of detained people. In this connection, it should be pointed out that they are run by associations or agencies with consolidated experience in the solidarity and assistance fields (mostly the Italian Red Cross). In these centres freedom of communication with the outside is guaranteed by allowing free use of wireless telephony devices and by distributing phone cards and stamps.

It is also possible to receive visits in fixed hours.

In all centres nursing services and leisure and sport premises are available as well as worship places in order to allow the immigrants to observe the rites of their own religions.

Special care is observed in the preparation of food, in respect of religious principles practised by detained foreign people.

Cultural meditation, interpretation and legal counselling services supplied by volunteer associations are also available in all centres.

Security measures, both active and passive, are enforced not only with the purpose of preventing any immigrant escapes, as explicitly provided for by Law n. 40 of 1998, but also in order to protect all people living in the centres. These measures are applied in order to avoid the rising of possible conflictual situations, which may be favoured by compulsory permanence conditions, among immigrants who are members of ethnic groups with different cultural, religious and traditional background.

As regards to judicial control on detention measures taken by the Questori, article 12, paragraph 4 of Law n. 40 of 1998 explicitly provides for their expiration in case of lack of confirmation by a judge within 48 hours. Judicial control is, therefore, always effective and jurisdictional protection of immigrants is ensured either in the first degree of the trial and in the degree of appeal.

33. On August 9th 2001 the Italian Government approved a bill providing adequate measures against the grave form of criminality linked to the traffic of persons and especially to “women trade”.

The bill is meant to solve problems arising from the implementation of existing regulations and - along with the United Nations Protocol on the prevention and fight of person trade, discussed at the Conference in Palermo (December 12th 2001) - to establish a line of conduct aimed at considering the organization and activation of human beings trade as a specific and independent crime.

Furthermore, to the trade victims is granted:

- assistance and protection

- documents to testify the status of victim, and others necessary for the repatriation in their native country.

As far as it concerns human trafficking, article 16 of the law 40/1998 and following art.18 of “Testo Unico” (D.L. 286/98) foresee the issuing of a special temporary residence permit for persons who are victims of human trafficking.

Those provisions are enforced by funding and developing initiatives at local level.

In year 1999/2000 49 different programs of action have been promoted for a total funding of 16.500.000.000 It. Lira.

Results of protection initiatives during the period 01/04/2000 – 30/06/2000:

F. Total numbers of persons concerned	7 242
Persons addressed to Public services	1 338
Persons in protection programs	354
Persons with legal temporary residence permit	156
Persons in temporary assistance	604
Persons in training programs	192
Persons employed	161

A new Draft of Law which takes into account the provisions of the Protocol against illegal trafficking of human beings (additional to the Convention against transnational organized crime) is at present pending for consideration of the Parliament.

This Draft of Law shall sanction as a specific and autonomous crime the organization and the implementation of human beings trafficking.

Asylum seekers and refugees

37. The Italian authorities are aware of the utility of a comprehensive law on asylum. As a matter of fact, during the previous legislature, the Government had already introduced a bill that, unfortunately, has not completed its course before the natural expiration of the Chambers. The present Government agrees with the fact that a comprehensive discipline would have the advantage to keep in a sole law the different already existing rules.

As far as assistance and interventions in favour of asylum seekers is concerned, it should be stressed the long standing and fruitful co-operation between Italian Authorities and UNHCR. A representative of UNHCR is member with full rights of the Special Committee charged for the recognition of the refugee status. It could be added that, in close co-operation with the UN High Commissioner for Refugees and the National Association of Italian Municipalities (ANCI), the Ministry of the Interior has recently launched a special assistance plan for asylum seekers allowing an extension of interventions after the term of 45 days, provided for by the existing legislation. This is an extraordinary strengthening of the assistance activity carried out by the Italian State towards the applicants for the recognition of the refugee status and it is aimed at ensuring financial means for a minimum of 180 days (board, lodging, health care, education and vocational training).

General climate concerning immigrants.

39. It must be clear that the negative climate, pointed out by ECRI, cannot be referred to immigrants in general but to the great number of illegal immigrants who, because of their conditions, are more easily involved in criminal activities.

Private sector

J. Employment

44-45. In order to face the problems, stressed by ECRI, and in order to reduce the weakness of the labour market of foreigners, Italy has concluded and intends to conclude bilateral agreements with countries of provenience, so as to offer, among others, better opportunities for employment, adequate to the professional qualifications owned by the foreigners.

K. Racism and mass events

46. The Italian Government has faced the problem of violent behaviour during sport events.

In the case of soccer matches, the safety of the vast public of supporters is endangered by limited fringes of violent people.

The violence in stadiums requires an answer by the Government which cannot only consist of aggravating penal sanctions, but also of increasing the safety levels and involving the most reasonable leaders of organized fans.

It is worth noting that, in order to face this situation, the Government is engaging about 11.000 policemen every Sunday at stadiums.

The relevant Ministries (Interior, Justice and Sport) have stressed the need to fill the gaps - in prevention and repression - of current guidelines.

On August 20th 2001 the Government approved a special Decree aimed at preventing and punishing acts of violence committed on the occasion of sport events and, among others, at punishing actions, expressions and written panels connotated by racism or intolerance:

- The Police can arrest the responsible of acts of violence to persons and to objects even if not caught in flagrancy (but anyhow within the 48 hours), whenever the identification of the culprits has been possible through photos, films or TV shots.
- Further provisions will reinforce the admittance in the stadiums and the obligation to sign at the Police Posts in the match-days for those convicted for previous acts of violence.

All these measures are contained in an "ad hoc" bill presented by the Council of Ministers together with another bill ruling:

- the utilization of close-circuit T.V.,
- the sale of ticket and their check at admittance to the stadiums,
- the relative administrative sanctions for default cases.

M. Antisemitism

49 Italy takes into account the suggestion of ECRI to pay attention to its recommendation n. 6 and deploys any effort in combating the dissemination of racist, xenophobic and antisemitic material, according to Italian legislation.

N. Law enforcement officials

51-52 As far as law enforcement officials misbehaviour is concerned, any complaint filed by possible victim is duly investigated and results of these investigations are brought before the competent Court.

Italy reserves a particular attention to the training of law enforcement officials operating in the field of human rights safeguard, as it is particularly stressed in the annexed booklet "Activity of the Carabinieri Corps in the field of human rights", issued by the Comando Generale dell'Arma dei Carabinieri.

54. As regards the linguistic-cultural mediation with some migrant's communities, the Department of Public Security, through its Central Directorate of Highway, Border and Post Police, has subscribed a Convention with the NGO called C.I.E.S. for the setting up of a linguistic-cultural mediation service at the Migration and Minors' Offices.

The Convention also envisages a training module for the Police operators belonging to the Border Police, as a completion of the specialisation courses for the Border personnel, carried out in Duino (North Eastern Italy), whose programme is herewith enclosed.

Penitentiary administration

55. There are no reports of ill treatments due to the personal features of prisoners, related to race, ethnic group, nationality, language, religion, political opinions or economic and social conditions of the prisoners themselves.

The fact that the above-mentioned complaints are not to be referred to the condition of being a non-national is confirmed by the complaints being lodged, on average, in the same measure by Italian prisoners as well.

On the other hand, the number of the complaints is not large and the ascertained episodes of ill-treatment are extremely rare.

However, it must be highlighted that any lawbreaking - in terms of violence, abuse of authority, or harassment towards any prisoner (both national and not national) - is a disciplinary infringement. It always results in a disciplinary sanction (up to the removal from office) in addition to causing an intervention of a criminal court where the facts can be considered crimes.

It is also important to notice that, just to prevent such events, the basic and on-going training of the Penitentiary Police as well as of the whole penitentiary staff focuses on education in legality, both "internal" (the Constitution and the ordinary laws) and international (the conventions ratified by Italy on the protection of human rights and against discriminations).

Therefore, it can be said that the training is strongly oriented to fight any attitude of intolerance, racism or xenophobia.

Furthermore, it must be pointed out that, in order to prevent any act of violence towards any prisoner (both alien national and Italian), and to facilitate the prosecution of any act of violence perpetrated, some special circulars – the first one dates back to June 1998 – have been issued, complying with what the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) hoped and providing that:

a) When the physician of the prison, during any medical examination, ascertains that the subject concerned presents injuries, he/she has to record in the Register “model 99” (register of examinations, prescriptions and proposals of the physician) both the objective outcome of the examination and what the examined subject may declare about the circumstances of the violence suffered and about persons who have committed the violence. The physician has also to write his/her evaluation whether the injuries are compatible with the relevant causes declared by the subject concerned;

b) In all the cases of injuries found during any medical examination the prisoner and the internee undergo, the notes written by the physician in the Register model 99 shall be immediately sent by the Prison Governor to the Judicial Authority for any possible provision.

In order to facilitate the full application of the principles stated in the above mentioned circulars, a new version of the Register “model 99” has been drawn. Unlike the former model, every page of the register in the new version is split up in several columns: date and time of the examination, prisoner’s personal data, objective examination, diagnosis and prognosis, proposals and instructions, prisoner’s statements, evaluation of the physician about the compatibility of the prisoner’s statements with the outcomes of the objective examination.

In the last column, the Prison Governor shall note his/her personal decisions.

The new structure of the Register Model 99, and namely the introduction of specific items concerning the prisoner’s “statements” and the physician’s evaluation, serves just for drawing the physician’s attention on the obligation of writing in the register, every time he/she finds some injuries on the prisoner/internee during an examination, all the elements within his/her competence, so that the Judicial Authority to be addressed may ascertain the facts.

c) As for the statement that “the immigrants have rarely access to measures alternative to detention”, it must be reasserted, as it was explained during the meeting with ECRI’s representatives, that measures alternative to detention (such as house arrest or permission to leave the prison during the day for working outside) are not easily applicable to persons deprived of a permanent housing, with a lack of employment and with a fragile social and familiar relationship as the great majority of foreigners in prisons who live in condition of clandestinity.

On the other hand, the prison benefits are granted or denied in Italy under the decision taken by independent magistrates, as in the Italian legal system only a judge may decide

on the prison benefits. Therefore, it can be quite stated that, in the same conditions, the benefits would be denied to an Italian citizen as well.

Nevertheless, ECRI's invitation to constantly and carefully monitor the situation, in order to remove any direct or indirect obstacle in this respect, is well accepted.

56. As regards item 56, as noted by ECRI, the Penitentiary Administration has provided for the translation (into English, French, German, Croatian and Arabic) of some excerpts from penitentiary rules and regulations as well as of an handbook relevant to the main rights of the prisoner (into French, English, Spanish and Arabic); the Administration has also drawn up a convention with CIES (a non governmental organisation for the linguistic-cultural mediation and integration) aimed at facilitating the process of integration of foreigners, in particular non-EU persons.

P. Situation of Roma/Gipsy communities

60. When talking about the Italian Roma/Gypsies, it is not proper to define them as a group which is practically segregated from the rest of the population, since the Italian legislation provides for specific measures in their favour, including enrolment in the registry office, free movement, work licenses and education.

61. In compliance with the existing regional laws and in co-operation with Municipalities, cultural mediators and voluntary societies, a number of Regions have taken steps for the setting up of campsites and transit areas specially equipped within authorised camps. Furthermore, regional laws provide for actions aimed at improving their life conditions, including health, housing, education and job; these provisions alone assume a great importance in themselves, since they prove that Gypsies are recognized as an ethnic minority with their own culture and language.

69. As to the proposal of protecting and recognizing the Roma/Gypsy population as a linguistic minority, it is worth mentioning that the Parliament has devoted its attention to this particular issue which has been the subject of a long debate during the law-making procedure for the adoption of Law No 482 of February 15th 1999, entitled "Provisions for the protections of historical linguistic minorities". Taking into account the particular importance of Roma/Gypsy communities, the Parliament and the Government are considering the possibility of approving a special law on this issue.

Q. Exploitation of racism and xenophobia in politics

General remarks.

Italy is one of Europe newest immigration societies. Until about 20 years ago it "exported" more workers than it "imported". Today, immigrants still make up only about 2.8 percent of the population, the lowest percentage in Europe.

In the past year, polls show that the Italian public opinion has begun to accept new immigrants as a necessary solution to an ageing work force.

Some inconveniences are the result of the absorption of foreigner manpower by the local communities. In a few words the social impact of immigration on local communities needs to be monitored and improved constantly.

Some isolated cases of intolerance by few citizens and local leaders have been broadly condemned. In any way they represent the official point of view of any Italian political party. No political party in Italy has in its programme or attitude any inspiration to racial and xenophobic intolerance.

Therefore, a new wording of the para 71-72-73 - as indicated below - could better reflect the Italian situation:

para 71: "ECRI is concerned at the widespread use made of racist and xenophobic propaganda by some individuals and some local leaders in Italy....."

para 72: "Racist and xenophobic propaganda is disseminated through the use of written material such as posters and leaflets, but in most cases has also been noticed in some speeches of few public figures at local level. In most cases non-European Union....."

: "...humiliating; however, there have also been reports of cases where local politicians would have resorted to speech encouraging violent or discriminatory..."

para 73: "It has been reported that some local members of political parties have made use of xenophobic or otherwise intolerant political discourse. ECRI registers here its concern at the influence these political persons could exert on the whole political arena. In this respect ECRI fears that in an attempt to obtain...."